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Sent: Monday, February 25, 2019 7:09 PM
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Subject: Angela Paxton Bill - SB 860

This is actually true – State Senator Angela Paxton filed a bill to take jurisdiction over some securities matters away from the Texas State Securities Board (as well as some consumer finance matters away from the Texas Finance Commission) and give control to her husband, the Texas Attorney General – a person with a bit of a checkered history on securities compliance matters. Moreover, the Dallas Morning News points out that the Texas Constitution bars lawmakers from voting on bills on which they have “a personal or private interest.” (but it is OK to sponsor?)

The press is on it:

A full editorial in the Houston Chronicle: **“What about ethics? Angela Paxton’s bill could help husband skirt the law”** - <https://www.houstonchronicle.com/opinion/editorials/article/What-about-ethics-Angela-Paxton-s-bill-could-13635148.php>

Dallas Morning News: **“Sen. Angela Paxton defends filing bill that would hand husband's agency new powers”**: <https://www.dallasnews.com/news/texas-legislature/2019/02/19/texas-state-sen-angela-paxton-defends-bill-hand-husbands-agency-new-powers>

Texas Monthly – **“Best & Worst Legislators in Real Time: Senator Angela Paxton, for Filing Legislation That Could Directly Benefit Her Indicted Husband - The rookie lawmaker stunned the Texas Senate.”** - <https://www.texasmonthly.com/politics/best-worst-legislators-in-real-time-senator-angela-paxton-for-filing-legislation-that-could-directly-benefit-her-indicted-husband/>

Texas Tribune: **“Sen. Angela Paxton files bill that would allow her husband, Texas Attorney General Ken Paxton, to issue exemptions from securities regulations”** - <https://www.texastribune.org/2019/02/16/ken-paxton-angela-securities-regulations-texas-attorney-general-power/>

Austin Chronicle: **“A scam for Paxtons”** - <https://www.austinchronicle.com/news/2019-02-22/lege-lines-a-win-for-brewers-a-scam-for-paxtons-and-more/>

I am also hearing that with this sort of press coverage that the bill is now not very interesting to relevant committee chairpersons. So, I don't anticipate it advancing.

But, the “regulatory sandbox” is a real item being promoted by various fintech promoters. Arizona has even adopted it. So, we will see what happens with Arizona's experiment. I think Texas should wait out the Arizona pilot project before considering any policy. <https://www.bloomberg.com/news/articles/2019-02-15/regulators-create-sandboxes-as-a-place-to-foster-fintech>

Here is the bill:

86R5157 GRM-F

By: Paxton

S.B. No. 860

A BILL TO BE ENTITLED
AN ACT

relating to the creation of a regulatory sandbox program administered by the attorney general for certain financial products and services; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 99, Business & Commerce Code, is amended by adding Chapter 2005 to read as follows:

CHAPTER 2005. REGULATORY SANDBOX PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2005.001. DEFINITIONS. In this chapter:

(1) "Applicable agency" means the department of this state established by law to regulate certain types of business activity in this state and the people engaging in that business, including the issuance of licenses and registrations, that the attorney general determines would regulate a program participant if the person were not operating under this chapter.

(2) "Consumer" means a person who enters into a transaction or agreement to receive an innovative financial product or service that is being offered under this chapter.

(3) "Financial product or service" means a financial product or service that requires a license or registration, or a financial product or service that includes a business model,

delivery mechanism, or element that would otherwise require a license, registration, or other authorization to act as a financial institution that is regulated under the Finance Code or The Securities Act.

(4) "Innovative" means the use of new or emerging technology or the reimagining of existing technology to address a problem, provide a benefit, or otherwise offer a product, service, business model, or delivery mechanism that is not known by the attorney general to have comparable widespread offering.

(5) "Innovative financial product or service" means a financial product or service that is considered innovative by the attorney general.

(6) "Program" means the regulatory sandbox program established under this chapter that allows a person, without being licensed or registered under the laws of this state, to test innovative financial products or services for a limited time and on a limited basis.

(7) "Program participant" means a person whose application to participate in the program is approved and in good standing.

(8) "Test" means to provide a financial product or service to the extent allowed under this chapter.

Sec. 2005.002. CONFLICT OF LAW. If there is a conflict between this chapter and another law or regulation of this state, this chapter controls.

Sec. 2005.003. FEDERAL LICENSURE REQUIREMENTS. A program participant is considered to be licensed, registered, or otherwise authorized to act in this state for purposes of any federal law that requires a person to be licensed, registered, or otherwise authorized to act.

Sec. 2005.004. CREATION OF PROGRAM. (a) The attorney general, in consultation with applicable agencies in this state, shall create a regulatory sandbox program that enables a person to obtain limited access to the market in this state to test innovative financial products or services without obtaining a license, registration, or other regulatory authorization.

(b) The program shall be administered by the consumer protection division of the office of the attorney general.

Sec. 2005.005. REPORT ON REGULATIONS. (a) Not later than December 31 of each even-numbered year, the attorney general shall deliver a report to each legislative committee with jurisdiction over each applicable agency.

(b) The report shall give an overview of the program, including detailed recommendations on regulations appropriate for certain financial products and services tested in the program.

SUBCHAPTER B. APPLICATION FOR PROGRAM PARTICIPATION

Sec. 2005.051. APPLICATION REQUIRED. (a) A person must obtain approval from the attorney general before testing an innovative financial product or service as a program participant. A separate application is required for each product or service to be tested under the program.

(b) A person that is licensed, registered, or has otherwise gained regulatory authorization to provide a financial product or service in this state must submit an application to test a new financial product or service under the program.

Sec. 2005.052. APPLICATION. (a) The attorney general shall review each submitted application to test a product or service under the program.

(b) The attorney general shall accept and review applications on a rolling basis.

(c) The application must be on a form prescribed under Section 2005.053 and demonstrate that the applicant:

(1) is subject to the attorney general's jurisdiction through incorporation, residency, presents agreement, or some other means;

(2) has an established location that the attorney general can access, either physically or virtually, from which testing will be developed and performed, and where all required records, documents, and data will be maintained; and

(3) has an adequate understanding of the product or service and a sufficient plan to:

(A) test, monitor, and assess the product or service; and

(B) ensure that consumers are protected from the test's failure.

Sec. 2005.053. CONTENTS OF APPLICATION. The attorney general by rule shall prescribe the application form. The form must require the applicant to:

(1) provide personal and contact information for the applicant, including the applicant's full legal name, addresses, phone numbers, e-mail addresses, Internet website addresses, and other information the attorney general requires;

(2) disclose any criminal convictions of the applicant or the officers and directors of the applicant; and

(3) provide a detailed description of the innovative product or service the applicant desires to test in the program, including:

(A) the regulation the product or service would be subject to outside of this program;

(B) the benefit the product or service would provide consumers;

(C) how the product or service is different from products and services available to consumers in this state;

(D) any risks to consumers who use or purchase the product or service;

(E) how participation in the program will allow for a successful test of the product or service;

(F) the proposed testing plan, including the estimated time period needed for market entry, market exit, and pursuit of necessary licensure, registration, or other regulatory authorization; and

(G) how the applicant will wind down the test and protect consumers if the product or service fails.

Sec. 2005.054. APPLICATION FEE. (a) The attorney general shall collect an application fee for each application submitted.

(b) The attorney general by rule shall set the application fee amount.

(c) All application fees collected under this section shall be remitted to the comptroller for deposit in the general revenue fund. Money deposited under this subsection may be appropriated only for programs of the consumer protection division of the office of the attorney general.

Sec. 2005.055. CONSULTATION WITH APPLICABLE AGENCY. (a) Before acting on an application under Section 2005.056, the attorney general must consult with the applicable agency.

(b) In consulting with the applicable agency, the attorney general may seek information regarding if:

(1) the applicant could obtain a license, registration, or other authorization from the applicable agency; and

(2) the applicable agency has:

(A) issued a license or registration to the applicant; or

(B) investigated, sanctioned, or disciplined, or

pursued legal action against, the applicant.

Sec. 2005.056. APPROVAL OR DENIAL OF APPLICATION. (a) Not later than the 90th day after the date the application is submitted, the attorney general shall notify the applicant if the application is approved for participation in the program.

(b) The attorney general and an applicant may mutually agree to extend the time to review an application under Subsection (a).

(c) In reviewing an application, the attorney general may request any additional information necessary for the attorney general to make a determination.

(d) Not later than the 30th day after the date the applicant receives notice of denial of an application by the attorney general, the applicant may file with the attorney general an appeal of the attorney general's determination requesting a time and place for a hearing before a hearing officer designated by the attorney general. The applicant is entitled to a hearing not later than the 60th day after the date of the request. A hearing under this subsection is governed by Chapter 2001, Government Code. After the hearing, based on the findings of fact, conclusions of law, and recommendations of the hearing officer, the attorney general shall enter a final order.

SUBCHAPTER C. PROGRAM ADMINISTRATION

Sec. 2005.101. APPROVAL OF PROGRAM PARTICIPATION. (a) On approval of an application by the attorney general, the applicant shall be issued a unique registration number.

(b) The program participant may test the product or service under the program for not longer than 24 months after the date the application is approved.

Sec. 2005.102. MAXIMUM NUMBER OF CONSUMERS. A product or service tested under the program may not be offered for sale or use to more than 10,000 consumers.

Sec. 2005.103. SCOPE OF PROGRAM. (a) Program participants may only offer financial products or services to residents of this state.

(b) The program is open only to the following financial products and services:

(1) consumer loans subject to Chapter 342, Finance Code, other than mortgage loans;

(2) money transmission as defined by Section 151.301, Finance Code;

(3) retail installment transactions as defined by Section 348.001, Finance Code; and

(4) acting as an investment adviser as defined by Subsection N, Section 4, The ~~Securities~~ Act (Article 581-4, Vernon's Texas Civil Statutes).

(c) Mortgage loans are not an eligible product to be tested in the program.

Sec. 2005.104. PROVISIONS APPLICABLE GENERALLY. (a) The attorney general may determine that certain laws or regulations apply to a program participant.

(b) If the attorney general determines that a law or regulation applies to a program participant, the attorney general must notify in writing the participant of the specific law or regulation.

Sec. 2005.105. PROVISIONS APPLICABLE TO CONSUMER LOANS.

(a) This section applies to consumer loans that would be subject to Chapter 342, Finance Code, if not offered under the program.

(b) A lender may not lend to an individual borrower more than:

(1) \$15,000 for each loan; and

(2) \$50,000 in aggregate for all loans.

(c) The sum of all fees, interest, and other amounts in

excess of principal due under a loan may not exceed 30 percent of the principal of that consumer loan.

Sec. 2005.106. PROVISIONS APPLICABLE TO MONEY TRANSMISSION. (a) This section applies to money transmission as defined by Section 151.301, Finance Code.

(b) A money transmission business may not transmit for an individual consumer more than:

(1) \$2,500 for each transaction; and

(2) \$25,000 in aggregate for all transactions.

Sec. 2005.107. PROVISIONS APPLICABLE TO MOTOR VEHICLE RETAIL INSTALLMENT TRANSACTIONS. (a) This section applies to a retail installment transaction as defined by Section 348.001, Finance Code.

(b) Sections 342.002, 348.102, 348.107, 348.112, 348.123, 348.201, 348.204, 348.205, 348.208, 348.209, and 348.412, Finance Code, apply to a retail installment transaction under the program.

(c) The sum of all fees, interest, and other amounts in excess of principal due under a retail installment transaction may not exceed 30 percent of the principal of that retail installment transaction.

Sec. 2005.108. PROVISIONS APPLICABLE TO INVESTMENT ADVISERS. (a) This section applies to a financial adviser as defined by Subsection N, Section 4, The ~~Securities~~ Act (Article 581-4, Vernon's Texas Civil Statutes), offering investment services.

(b) Each program participant offering investment services must make, maintain, and preserve books and records in accordance with the requirements imposed on federal covered advisers under 17 C.F.R. Section 275.204-2.

(c) The participant shall file with the attorney general and the State ~~Securities~~ Board a copy of any notices or written undertakings required to be filed by federal covered advisers with the United States ~~Securities~~ and Exchange Commission under 17 C.F.R. Section 275.204-2.

(d) Subsection C, Section 29, The ~~Securities~~ Act (Article 581-29, Vernon's Texas Civil Statutes), applies to investment services offered under this program.

(e) State ~~Securities~~ Board rules adopted under The ~~Securities~~ Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) apply as they relate to:

(1) dishonest and unethical practices;

(2) information required to be furnished to clients;

(3) custody of client funds or ~~securities~~; and

(4) disclosure of financial and disciplinary information to clients.

Sec. 2005.109. REPORTING REQUIREMENTS. (a) The attorney general may require program participants to periodically report information requested by the attorney general.

(b) Program participants shall make records, documents, and data available for inspection by the attorney general.

Sec. 2005.110. CONFIDENTIALITY OF RECORDS UNDER PROGRAM. (a) Subject to Subsection (b), records provided to the attorney general by a program participant are confidential and do not constitute public information for purposes of Chapter 552, Government Code.

(b) Records provided to the attorney general by a program participant may be disclosed to:

(1) federal and state agencies;

(2) representatives of foreign governments who have regulatory authority over a program participant;

(3) a state or federal grand jury in response to a subpoena; and

(4) the state auditor for the purpose of conducting audits authorized by law.

Sec. 2005.111. REMOVAL FROM PROGRAM. (a) If the attorney general believes a program participant is violating an applicable state or federal regulation, the attorney general may remove the participant from the program immediately.

(b) The decision to remove a program participant may be appealed using the process under Section 2005.056(d).

SUBCHAPTER D. CONSUMER PROTECTION

Sec. 2005.151. WRITTEN CONSUMER DISCLOSURE REQUIRED. (a) Before providing an innovative financial product or service to a consumer, a program participant must disclose to the consumer all information required under this section.

(b) The program participant must disclose:

(1) the name and contact information of the participant, including the registration number assigned by the attorney general under Section 2005.101(a);

(2) that the financial product or service is authorized under the program, and the participant does not have a license, registration, or other regulatory authorization to provide financial products or services under the laws of this state that regulate financial products and services;

(3) that this state does not endorse or recommend the financial product or service;

(4) that the financial product or service is a temporary test under the program and may be discontinued at the end of the testing period, and the expected end date of the test; and

(5) that consumers may contact the consumer protection division of the office of the attorney general regarding the financial product or service and provide the division's phone number, e-mail address, and Internet website where complaints may be filed.

(c) The disclosure required by Subsection (b) must be:

(1) clear and conspicuous;

(2) in both English and Spanish; and

(3) physically or digitally signed by the consumer.

Sec. 2005.152. FAILURE OF TEST. (a) If a financial product or service fails, the program participant shall notify the attorney general not later than the 30th day before the date the program participant will cease operation.

(b) The program participant shall implement the wind down plan as described in the application under Section 2005.053.

SUBCHAPTER E. TERMINATION OF PROGRAM

Sec. 2005.201. EXPIRATION. This chapter expires on December 31, 2029.

Sec. 2005.202. PROGRAM WRAP UP. The attorney general shall make all necessary preparations to ensure that all program participants' tests of financial products or services are concluded before the date under Section 2005.201.

SECTION 2. This Act takes effect September 1, 2019.

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